IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

JOHN TEMPLEMIRE,

Appellant,

v.

W&M WELDING, INC.,

Respondent.

DOCKET NUMBER WD74681

MISSOURI COURT OF APPEALS WESTERN DISTRICT

DATE: December 26, 2012

APPEAL FROM

The Circuit Court of Pettis County, Missouri The Honorable Robert L. Koffman, Judge

JUDGES

Division Two: Hardwick, P.J., and Smart and Mitchell, JJ.

CONCURRING.

ATTORNEYS

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Attorneys for Appellant,

James T. Buckley Sedalia, MO

Attorney for Respondent.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

JOHN TEMPLEMIRE,)
	Appellant,)
v.) OPINION FILED:
) December 26, 2012
W&M WELDING, INC.,)
)
	Respondent.)

WD74681 Pettis County

Before Division Two Judges: Lisa White Hardwick, Presiding Judge, and James M.

Smart, Jr., and Karen King Mitchell, Judges

John Templemire appeals a jury verdict in favor of his former employer, W&M Welding, Inc., on Templemire's claim of retaliatory discharge in violation of section 287.780 of the Workers' Compensation Act. Templemire raises two claims of instructional error. First, he argues that the verdict-director's requirement that Templemire's workers' compensation claim was the "exclusive factor" in his employer's decision to terminate him is contrary to the law, and that the jury should have been instructed that he was entitled to relief if the jury found that his workers' compensation claim was merely a "contributing factor." Second, he argues that, in light of the verdict-director's use of "exclusive factor" language, the jury should have received a pretext instruction advising the jurors that they could find exclusive causation if the employer's claimed justification for termination was merely a pretext and its true reason was retaliation for Templemire exercising his workers' compensation rights.

AFFIRMED.

Division Two holds:

1. Under current Missouri Supreme Court precedent, by which we are bound, the verdict-director using "exclusive factor" causation language was not erroneous. While we see nothing in the statute requiring an "exclusive factor" analysis, until the Missouri Supreme Court issues a decision indicating that "exclusive factor" causation is no longer required, we must follow the most recent authority provided to us.

2. The trial court was not required to give a pretext instruction, but the decision to do so is wholly within the trial court's discretion. In this case, the court did not abuse its discretion in refusing Templemire's pretext instruction, as it did not appear to accurately state the law.

Opinion by: Karen King Mitchell, Judge

December 26, 2012

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